secured creditors enforced their claim against the property, the unsecured creditors must go unpaid, while on the other hand, if the secured creditors held off for a time, in all probability all would be paid. *Held*, that a receiver be appointed. *Thompson's Receivership*, 44 Pa. County Ct. 518.

For a discussion of the principles involved in this decision, see Notes p. 273.

EXECUTORS AND ADMINISTRATORS — PROCEEDINGS BY OR AGAINST — ALLOWANCE FOR COUNSEL FEES INCURRED IN DEFENCE OF BEQUEST. — A petition was filed for allowance from the estate for fees of counsel employed by executor to defend certain charitable bequests subsequently declared void. *Held*, that the petition be denied. *Arnold's Estate*, 64 Pitts. L. J. 596.

The argument is that an executor may not charge the estate unless he is acting in the interest of those eventually found to be entitled to the property. Originally an executor derived his authority entirely from the will. He acted as the representative of the deceased to carry out his wishes. Modern procedure merely requires the sanction of the court to this appointment and does not change the purpose. It would seem then that it was not only the privilege but the duty of the executor to defend the validity of the bequests and of the whole will. *Compton* v. *Barnes*, 4 Gill (Md.) 55; *Bradford* v. *Boudinot*, 3 Wash. (U. S. C. C.) 122; *Succession of Heffner*, 49 La. Ann. 407, 21 So. 905; *In re Title, Guaranty & Trust Co.*, 114 App. Div. 778, 100 N. Y. Supp. 243. Wherefore he may defend a bequest even against the wishes of the legatees interested therein. *Reed* v. *Reed*, 74 S. W. 207 (Ky.). But he must be *bonâ fide* in the belief that there is a reasonable chance of upholding the bequest. *Henderson* v. *Simmons*, 33 Ala. 291; *Bratney* v. *Curry*, 33 Ind. 399; *Bowden* v. *Higgs*, 77 Tenn. 343. However, there is authority in support of the principal case, that the executor is acting in behalf of the legatees, and not for the testator. Under such theory it must follow that his recovery for counsel fees against the estate is limited to the interest in the estate of the legatee for whom he has acted. *Koppenhaffer* v. *Isaacs*, 7 Watts (Pa.) 170. And he can have no charge upon the estate if unsuccessful. *Kelly* v. *Davis*, 37 Miss. 76. But a special provision in the will desiring the expenses of defending a bequest to be paid out of the estate must surely protect the executor. The *dictum* of the court that such a provision would be void if the bequest was void is difficult to sustain. For there can be no public policy against testing one's legal rights in court.

INTERSTATE COMMERCE — COMPETITION — REVIEW OF COMMISSION'S ORDERS. — The Panama Canal Act provided a heavy daily penalty for the operation after a certain date of steamship lines found by the Interstate Commerce Commission to be in competition with railroads which owned them. The Lehigh Valley Railroad petitioned the Commission, before the date from which the penalties under the Act were to run, to declare that there was no competition between the railroad and its steamers. After two hearings in which the Commission found as a fact that such competition existed, the railroad brought a bill in equity asking the District Court to enjoin the Commission's order, which had refused, on the ground of the competition found, to declare that the railroad might run its boats without penalty. *Held*, that the prayer be denied. *Lehigh Valley R.* v. *U. S.*, 234 Fed. 682.

The position of the Interstate Commerce Commission as a fact-finding body is put in question. Without a binding statutory declaration the conception has become crystallized that the orders of the Commission as an administrative body made after hearing evidence are reviewable only in so far as they exceed the Commission's statutory authority, violate a constitutional provision, reveal a mistake in law, or transcend the bounds of reason. *I. C. C.* v. *Ill. Cent. R.*, 215 U. S. 452; *I. C. C.* v. *Union Pacific*, 222 U. S. 541; *I. C. C.* v. *Louisville, etc. R.*, 227 U. S. 88; *Los Angeles Switching Case*, 234 U. S. 294. See

Procter & Gamble v. *U. S.*, 225 U. S. 282, 297. And the Panama Canal Act has expressly declared that the Commission's finding on the question of competition shall be final. 37 STAT. AT LARGE, 566. Congress has thus put beyond a court's review the decision of a body of experts on this involved technical subject. But the complainant's case must also fall on another ground. The district courts have been given the power vested in the recently abolished Commerce Court to "enjoin, set aside, annul or suspend" the Commission's orders. 38 STAT. AT LARGE, 219; 36 STAT. AT LARGE, 539. By judicial interpretation this power to review has been limited in this class of cases to orders made to a carrier that it act affirmatively. *Procter & Gamble* v. *U. S.*, *supra*. Any other interpretation, which would give the district courts by an exercise of original action the power to enforce their conceptions as to the meaning of the Act on subjects in their nature administrative, would greatly tend to nullify the benefits derived from the existence of the Commission as a permanent body for investigation and administration. The order in the principal case is clearly negative, since with or without it the railroad must cease to run boats or else pay the penalty provided by Congress.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — REGULATION OF RATES — ELIMINATION OF WATER COMPETITION BY NATURAL CAUSES. — Certain railroads on applications to the Interstate Commerce Commission were allowed to reduce coast to coast rates below those to intermediate points, so as to meet water competition through the Panama Canal. Slides for several months had stopped traffic through the canal. Because of the greater profit in foreign commerce it was apparent that this traffic would not be resumed for several months. Section 4 of the Interstate Commerce Act provides in part that when a railroad shall reduce its rates in competition with a water carrier, it shall not be permitted to increase them except on grounds other than the elimination of water competition. The shippers of intermediate points seek to have the former applications reopened for further consideration and readjustment. *Held*, that the application will be reopened. *In the Matter of Reopening Fourth Section Applications*, 40 Int. Com. Rep. 35.

For a discussion of the principles involved in the decision, see NOTES, p. 276.

LIBEL — PUBLICATION — DOES AN INTERCEPTED LETTER CREATE LIABILITY FOR PUBLICATION. — The defendant sent a letter to a friend containing statements defamatory of the plaintiff. The friend never saw the letter, but his father opened and read it. The plaintiff sues for this publication. *Held*, that the defendant is not liable. *Powell* v. *Gelston*, [1916] 2 K. B. 615.

Upon publication of a libel, the liability of the publisher as regards the falsity of the words, their reference to the injured party, and their defamatory content, would seem to be absolute. *Hulton* v. *Jones*, [1910] A. C. 20; *Campbell* v. *Spottiswoode*, 3 B. & S. 769. See *Neville* v. *Fine Arts, etc. Co.*, [1895] 2 Q. B. 156, 168. *Contra, Hanson* v. *Globe Newspaper Co.*, 159 Mass. 293, 34 N. E. 462; *Jones* v. *Polk & Co.*, 190 Ala. 243, 67 So. 577. See 29 HARV. L. REV. 533. But as regards the publication itself of the libel, an element of fault appears to be necessary to create liability. See *The King* v. *Paine*, 5 Mod. 163, 167. The defendant is liable if the writing came into circulation through his negligence or failure to take proper precautions to prevent it. *Vitzetelly* v. *Mundie's Co.*, [1900] 2 Q. B. 170; *Thorley* v. *Lord Kerry*, 4 Taunt. 355. *A fortiori*, an intended publication creates liability. But in the principal case the intended publication never took place, and negligence seems not to have been present, since the opening of the letter by the father could not have been foreseen. In the criminal law the intent to produce one result will create responsibility for another proximately caused, though unintended. *Gore's Case*, 9 Co. 81 *a*. But that is not the theory of the law in civil actions. Perhaps, however, the neces-